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Before the
Federal Communications Commission
Washington, D.C. 20554

JUL 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 90 of the)
Commission's Rules to)
Facilitate Future)
Development of SMR Systems)
in the 800 MHz Frequency Band)

PR Docket No. 93-144
RM-8117, RM-8030, RM-8029

To: The Commission

COMMENTS
OF THE
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	iii
I. PRELIMINARY STATEMENT	1
II. COMMENTS	4
A. DEFINITION OF REGION	4
B. USE OF SMR POOL CHANNELS ONLY	7
C. SELF-COORDINATION OF EMSP LICENSES	9
D. CO-CHANNEL INTERFERENCE STANDARDS	10
E. EXPANSION OF EMSP SYSTEMS/ADVANCED TECHNOLOGIES REQUIRED	11
F. PERFORMANCE BOND/ESCROW ACCOUNT	11
III. CONCLUSION	12

EXECUTIVE SUMMARY

NABER supports the amendment of the Commission's rules to facilitate the licensing of wide-area 800 MHz Specialized Mobile Radio ("SMR") systems. The Commission's resources are being unnecessarily utilized in having to process applications for such systems by rule waiver. Nevertheless, NABER is concerned that the Commission's proposals in this proceeding to implement Enhanced Mobile Service Provider ("EMSP") licenses may have an adverse impact on small SMR operators that do not wish to implement wide-area SMR systems, especially in large regions such as Metropolitan Trading Areas or Basic Trading Areas. Further, with the infrastructure of 800 MHz SMR systems that currently exist, the Commission's proposals may unduly complicate the application procedures for implementing wide-area SMR systems.

Specifically, NABER suggests that the Commission eliminate pre-defined areas for applying for EMSP licenses. The better mechanism is to permit the applicant to define its required service area based on existing customer base, amount of financial resources available to construct the wide-area system, and future business plans. NABER urges the Commission to permit re-use of non-SMR frequencies in an EMSP system. NABER also recommends frequency coordination between adjacent co-channel EMSP licensees, a requirement that EMSP applicants serve a copy of their applications on affected co-channel licensees, and the imposition of a performance/escrow account with an exemption provided by existing constructed, operational systems included in an EMSP filing.

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**COMMENTS
OF THE
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.**

The National Association of National Association of Business and Educational Radio, Inc. ("NABER"), pursuant to Section 1.415 of the Commission's Rules and Regulations, 47 C.F.R. § 1.415, respectfully submits its Comments in response to the Notice of Proposed Rule Making ("Notice") adopted by the Commission in the above-styled proceeding.¹

I. PRELIMINARY STATEMENT

NABER is a national, non-profit, trade association headquartered in Alexandria, Virginia, that represents the interests of manufacturers, vendors and service providers as well as large and small businesses that use land mobile radio communications as an important adjunct to the operation of their businesses. NABER has six membership sections representing Users, Private Carrier Paging licensees, Radio Dealers, Technicians, Site Owners and Managers, and Specialized Mobile Radio operators. NABER

¹ Notice of Proposed Rule Making (FCC 93-257), PR Docket No. 93-144, 58 FR 33062 (June 15, 1993).

operates over 6,000 of these businesses and service providers.

wide-area SMR systems. However, NABER is concerned that the method by which the Commission has chosen to accomplish its goal may not provide adequate protection to the smaller SMR operators who do not require or do not have the desire to create a large, wide-area SMR network. Implementation of the Commission's licensing scheme, as proposed, could adversely impact the smaller SMR operators ability to expand their systems and continue to operate these small businesses.

Further, the Commission recognized that this proceeding may have been implemented too late in light of the proliferation of filings for wide-area SMR systems, and requested comment on whether modifications to the rules were therefore necessary at this time. NABER believes that amendment to the rules are necessary to facilitate the grant and implementation of pending wide-area applications as well as to expedite modifications that may be required to be made to these systems once construction and implementation is begun. Nevertheless, the Commission's proposals may not provide either the incentive or the proper method to meet the needs of SMR operators which have begun the implementation of wide-area SMR networks.

NABER also questions whether there are any regions in which a top 100 market is located that has at least forty-two unassigned SMR service pool channels currently available. Even if there were such areas, NABER suggests that after the initial EMSP application filings, the availability of SMR frequencies would be less than

currently exists. Thus, the provisions for new entrants holding EMSP licenses most likely is illusory.

Accordingly, NABER submits these Comments to offer the Commission suggestions for modifications to the Commission's proposals to balance the needs of the smaller SMR operators and the larger SMR operators, but at the same time accomplishing the goals of the Commission in this proceeding.

II. COMMENTS

A. Definition of Region

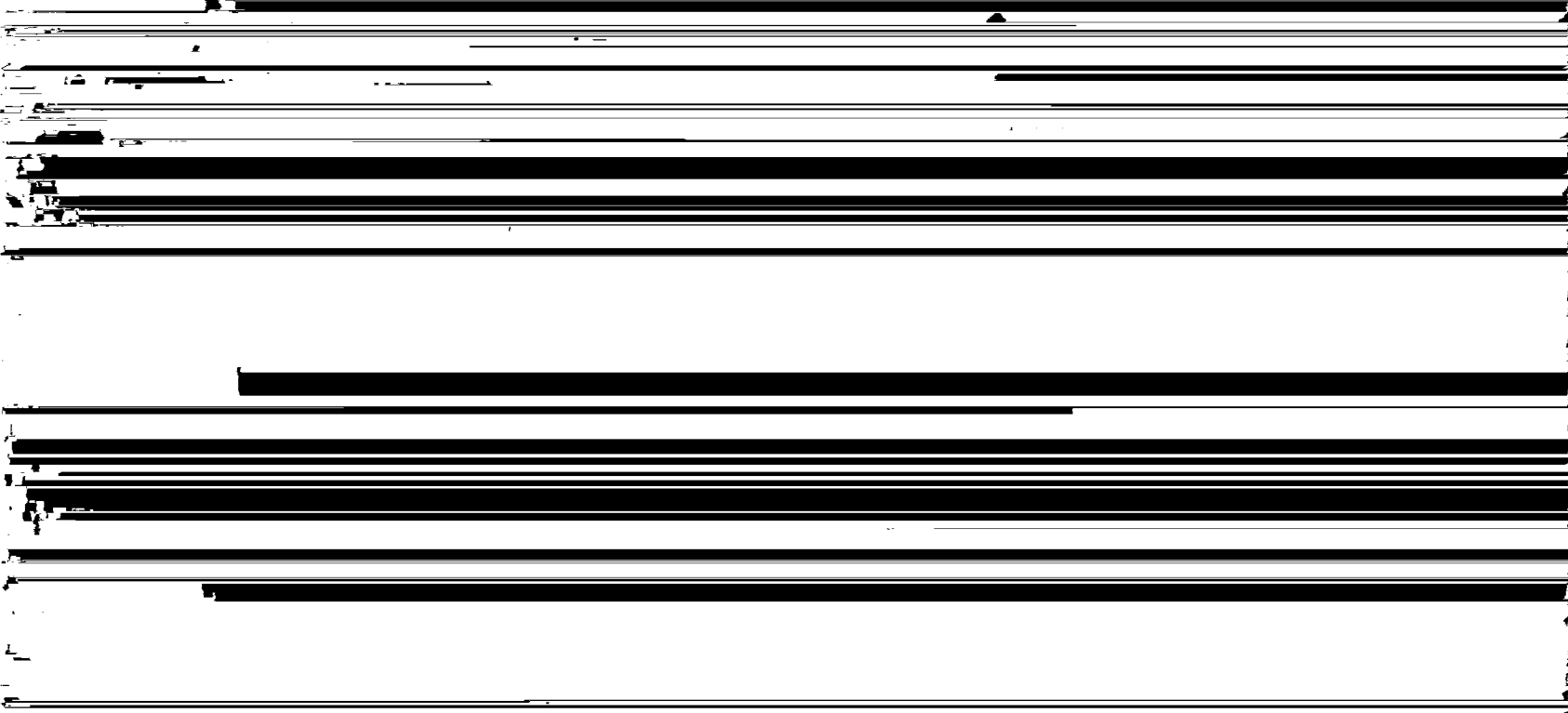
The Commission proposes to have a defined regions in which an EMSP license would be issued. These regions, as proposed, would either be the forty-seven (47) Metropolitan Trading Areas ("MTAs") or the four hundred eighty-seven (487) Basic Trading Areas. Adoption of regions defined as MTAs is consistent with the licensing proposals made by RAM Mobile Data, Inc. in the 900 MHz Phase II rule making proceeding.² The Commission asserts that licensing of EMSP by MTAs would permit a sufficiently large area to provide efficient re-use of frequencies, give flexibility in the service, and cover business areas in which customers may wish to roam. However, the Commission also recognizes that the MTAs may be too large and not necessarily reflect an SMR operators existing customer base, and therefore alternatively proposes the smaller BTAs.

² First Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 89-553, adopted January 14, 1993, 58 FR 12205 (March 3, 1993).

NABER is concerned that the Commission's proposed designation of pre-defined regions for licensing EMSP systems may not ease the administrative burden of either the Commission or the EMSP applicant because of previously authorized wide-area 800 MHz SMR networks and pending applications for wide-area 800 MHz SMR networks. NABER recognizes that Commission defined boundaries may relieve a portion of the administrative burden in processing applications for wide-area systems. The establishment of pre-defined regions for licensing purposes may be justified and warranted for spectrum where no licenses have been issued or it lightly licensed, such as for licensing of the 900 MHz SMR channels outside the Designated Filing Areas ("DFAs") or in the Personal Communications Services. However, in the 800 MHz SMR band, there is already an infrastructure of systems already in place and the service areas for the various wide-area SMR networks have been

may be included in one MTA. An existing SMR operator may have a presence in a smaller, less populated market but not in the largest populated market. With a requirement that an EMSP licensee provide coverage to either 80% of the population or 80% of the geographic area, the SMR operator in the smaller metropolitan market may be precluded from applying for an EMSP license to re-use his/her frequencies based on two considerations. One is that such operator is unable to re-use his/her frequencies in and around the densely populated market and cannot meet the requirement to provide service to 80% of the population. Secondly, even though the operator could construct sufficient stations to cover 80% of the geographic area of the MTA, this coverage may not be economically feasible because of a lack of significant populations to support such infrastructure. Therefore, NABER reiterates its position that the Commission should not establish pre-defined regions.³

Should the Commission amend its rules to license EMSP systems by regions. NABER urges the Commission to continue to permit SMR



flexibility in determining how to provide the service their customers demand.

B. Use of SMR Pool Channels Only

The Commission also proposes to restrict an EMSP license to re-use of SMR pool channels only. NABER does not support the Commission's exclusion of the non-SMR pools channels from the EMSP licenses. A number of wide-area 800 MHz SMR systems, both granted and pending, re-use non-SMR frequencies. Elimination of the re-use of these frequencies from wide-area 800 MHz SMR systems may hamper the introduction of spectrum efficient, advanced technologies as currently being planned by a number of existing SMR operators.

As the Commission is aware, there is a limited number of 800 MHz SMR frequencies. In the majority of top metropolitan markets, new entrants have been foreclosed from obtaining authorizations for new 800 MHz SMR facilities by application to the Commission and existing SMR licensees have been unable to expand their systems with SMR frequencies by application to the Commission.⁴ These existing SMR operators in wait-list areas have accomplished system expansion by a number of different methods, i.e. acquisition of SMR channels through contract and the planning and application for digital, wide-area SMR systems.

Additionally, the Commission's rules permit existing SMR licensees, with fully loaded systems, to expand the capacity of

⁴ See Public Notice (Report No. 33229), Private Radio 800 MHz Systems Application Waiting List dated May 28, 1993.

their systems through intercategory sharing of Business, General Category, and Industrial/Land Transportation pool channels.⁵ A number of existing SMR licensees have taken advantage of this rule provision. Therefore, a majority of existing 800 MHz SMR networks operate on both SMR and non-SMR frequencies. The Commission's proposal to now exclude these non-SMR frequencies from wide-area SMR systems would undermine these operators' efforts to increase the capacity of their systems and to provide competitive telecommunications services to their customer.

Further, conventional SMR stations may only be licensed on General Category channels. The Commission's rules also provide an opportunity for constructed and operational conventional 800 MHz SMR stations to consolidate to become a trunked SMR station or to be combined with an existing trunked SMR station.⁶ The Commission's proposal would completely preclude these SMR operators, which have overcome many obstacles to establish trunked SMR systems, from expanding their business opportunities and establishing EMSP systems. As many of these operators are small business entities, the Commission's proposal may have an adverse impact on small businesses rather having a positive affect on these entities.

With the number of existing SMR operators that have expanded SMR systems with non-SMR category frequencies and other trunked SMR systems consisting mainly of General Category frequencies, the

⁵ 47 C.F.R. § 90.621(g).

⁶ 47 C.F.R. § 90.615.

Commission's proposal may impede the growth of the spectrum efficient 800 MHz SMR systems and frustrate the development of a thriving, highly-competitive telecommunications industry. Accordingly, NABER urges the Commission to include re-use of non-SMR frequencies in the EMSP licenses. At a minimum, the Commission must permit the re-use of non-SMR frequencies when existing SMR operators, with constructed and operational systems authorized such non-SMR frequencies, apply for an EMSP license.

C. Self-coordination of EMSP Licenses

The Commission proposes to permit EMSP applicants to self-coordinate the applications for their proposed systems. An applicant would be required to provide a listing of all co-channel licensees in the area should the proposed stations not meet the channel spacing as required under Section 90.621(b) of the Commission's rules. NABER is concerned that with the Commission's current delay in keying wide-area SMR applications in the data base, an EMSP applicant may not be able to adequately provide an up-to-date list. As long as the Commission intends to continue to scrutinize an applicant's list, NABER does not oppose this proposal. However, NABER recommends that the EMSP applicant be required to serve a copy of the application on all affected co-channel licensees.

Should the Commission permit re-use of General Category channels, NABER urges the Commission to continue to require frequency coordination of the EMSP applications which include such channels.

D. Co-channel Interference Standards

The Commission proposes that EMSP licensees protect any existing co-channel licensees under the requirements of Section 90.621(b). Further, adjacent EMSP licensees would be required to meet an interference standard, i.e., the signal strength of any station could not exceed 22 dBu. An existing station that is part of an EMSP system would not be required to meet the standard, but the adjacent co-channel EMSP licensee would not be required to provide protection to this station under the provisions of Section 90.621(b). The Commission also seeks comments on alternative proposals that (1) no co-channel interference standards be adopted and let licensees coordinate among themselves or (2) license individual EMSP stations on a first-come/first-serve basis and receive protection from subsequently licensed co-channel stations pursuant to Section 90.621(b).

NABER supports the Commission's alternative proposal to require co-channel EMSP licensees to coordinate among themselves and suggests that the Commission adopt a rule similar to Section 22.902(d) of the Commission's rules governing cellular systems. Many of the proposed rules in this proceeding parallel the cellular rules, e.g. service coverage area and notification to Commission of new transmitter sites. With the flexibility the Commission is permitting on establishment of new sites and relocations, frequency coordination among the co-channel EMSP should relieve a portion of the Commission's administrative burden

in processing the applications and reduce the paperwork burden to

EMSP licenses so long as a licensee's existing stations provide an exemption to the applicant from this requirement.

NABER, however, questions the Commission's proposal to have the applicant estimate the cost of construction for purposes of the performance bond or escrow account. NABER recommends that the Commission set a guideline for such estimates and be permitted to reject an applicant's estimate should it be unrealistic.

III. CONCLUSION

NABER supports the Commission's efforts to amend the rules governing SMR operations to accord greater flexibility to the SMR operator to implement wide-area 800 MHz systems. NABER generally supports the Commission's proposal, as modified by NABER's comments above. Specifically, NABER urges that the Commission eliminate pre-defined regions for EMSP systems and eliminate the exclusion of re-using non-SMR frequencies in EMSP systems.

WHEREFORE, THE PREMISES CONSIDERED, the National Association of Business and Educational Radio, Inc. hereby respectfully requests the Federal Communications Commission to take action in this proceeding consistent with the comments herein.

Respectfully submitted,

**NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.**

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